



Senate

General Assembly

File No. 352

January Session, 2007

Substitute Senate Bill No. 1341

Senate, April 5, 2007

The Committee on Public Health reported through SEN. HANDLEY of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PROTECTING PUBLIC WATER SUPPLIES FROM CONTAMINATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-262m of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) As used in this section and section 8-25a, "water company"
4 means a corporation, company, association, joint stock association,
5 partnership, municipality, state agency, other entity or person, or
6 lessee thereof, owning, leasing, maintaining, operating, managing or
7 controlling any pond, lake, reservoir, stream, well or distributing plant
8 or system employed for the purpose of supplying water to fifteen or
9 more service connections or twenty-five or more persons [on a regular
10 basis] for at least sixty days in any one year.

11 (b) No water company may begin the construction of a water supply
12 system for the purpose of supplying water to fifteen or more service

13 connections or twenty-five or more persons for at least sixty days in
14 any one year, and no [water company] person or entity, except a water
15 company supplying more than two hundred fifty service connections
16 or one thousand persons, may begin expansion of such a water supply
17 system, without having first obtained a certificate of public
18 convenience and necessity. [for the construction or expansion from the
19 Department of Public Utility Control and the Department of Public
20 Health. An]

21 (c) For systems serving twenty-five or more residents, an
22 application for a certificate of public convenience and necessity shall
23 be on a form prescribed by the Department of Public Utility Control, in
24 consultation with the Department of Public Health, and accompanied
25 by a copy of the water company's construction or expansion plans and
26 a fee of one hundred dollars. The departments shall issue a certificate
27 to an applicant upon determining, to their satisfaction, that (1) no
28 [feasible] interconnection is feasible with [an existing system is
29 available to the applicant] a water system owned by, or made available
30 through arrangement with, the provider for the exclusive service area,
31 as determined pursuant to section 25-33g or with another existing
32 water system where no exclusive service area has been assigned, (2)
33 the applicant will complete the construction or expansion in
34 accordance with engineering standards established by regulation by
35 the Department of Public Utility Control for water supply systems, (3)
36 [the applicant has the financial, managerial and technical resources to
37 operate the proposed water supply system in a reliable and efficient
38 manner and to provide continuous adequate service to consumers
39 served by the system] ownership of the system will be assigned to the
40 provider for the exclusive service area, as determined pursuant to
41 section 25-33g, (4) the proposed construction or expansion will not
42 result in a duplication of water service in the applicable service area,
43 and (5) the applicant meets all federal and state standards for water
44 supply systems. [, provided subdivisions (1) and (4) of this subsection
45 shall not apply to any water supply system (A) owned and operated or
46 proposed to be owned and operated, by a municipality, municipal
47 district or regional water authority, (B) owned by a municipality,

48 municipal district or regional water authority and operated, or
49 proposed to be operated, on its behalf by an operator that has obtained
50 all required certifications from the Department of Public Health,
51 including but not limited to certifications required by regulations
52 established pursuant to section 25-32, or (C) owned or operated by a
53 nonprofit corporation on behalf of one or more municipalities for the
54 purpose of providing water service to an elderly housing project which
55 has obtained all required certifications from the Department of Public
56 Health, including but not limited to certifications required by
57 regulations established pursuant to section 25-32. Nothing in this
58 section shall prevent a municipality, municipal district or regional
59 water authority from voluntarily transferring ownership of a water
60 supply system to another water company, a municipal public service
61 company or regional water authority.] Any construction or expansion
62 with respect to which a certificate is required shall thereafter be built,
63 maintained and operated in conformity with the certificate and any
64 terms, limitations or conditions contained therein.

65 [(c)] (d) The Department of Public Utility Control [, in consultation
66 with] and the Department of Public Health, shall each adopt
67 regulations, in accordance with the provisions of chapter 54, to carry
68 out the purposes of subsections (a) to (c), inclusive, of this section.

69 (e) (1) For systems serving twenty-five or more persons, but not
70 twenty-five or more residents, at least sixty days in any one year an
71 application for a certificate of public convenience and necessity shall
72 be on a form prescribed by the Department of Public Health and
73 accompanied by a copy of the construction or expansion plans. The
74 Department of Public Health shall issue a certificate to an applicant
75 upon determining, to its satisfaction, that (A) no interconnection is
76 feasible with a water system owned by, or made available through
77 arrangement with, the provider for the exclusive service area, as
78 determined pursuant to section 25-33g or with another existing water
79 system where no existing exclusive service area has been assigned, (B)
80 the applicant will complete the construction or expansion in
81 accordance with engineering standards established by regulation for

82 water supply systems, (C) ownership of the system will be assigned to
83 the provider for the exclusive service area, as determined pursuant to
84 section 25-33g, if agreeable to the exclusive service area provider and
85 the Department of Public Health, or may remain with the applicant, if
86 agreeable to the Department of Public Health, provided the applicant
87 has the financial, managerial and technical resources to (i) operate the
88 proposed water supply system in a reliable and efficient manner, and
89 (ii) provide continuous adequate service to consumers served by the
90 system, until such time as the water system for the exclusive service
91 area, as determined by section 25-33g, has made an extension of the
92 water main, after which the applicant shall obtain service from the
93 provider for the exclusive service area, (D) the proposed construction
94 or expansion will not result in a duplication of water service in the
95 applicable service area, and (E) the applicant meets all federal and
96 state standards for water supply systems. Any construction or
97 expansion with respect to which a certificate is required shall
98 thereafter be built, maintained and operated in conformity with the
99 certificate and any terms, limitation or conditions contained therein.
100 Properties held by the Department of Environmental Protection and
101 used for or in support of fish culture, natural resource conservation or
102 outdoor recreational purposes shall be exempt from the requirements
103 of subdivisions (1), (3) and (4) of subsection (c) of this section and
104 subparagraphs (A), (C) and (D) of subdivision (1) of subsection (e) of
105 this section.

106 (2) The Department of Public Health shall adopt regulations, in
107 accordance with the provisions of chapter 54, to carry out the purposes
108 of this subsection. Such regulations may include measures that
109 encourage water conservation and proper maintenance.

110 Sec. 2. Subsection (d) of section 19a-36 of the general statutes is
111 repealed and the following is substituted in lieu thereof (*Effective*
112 *October 1, 2007*):

113 (d) [Notwithstanding any regulation adopted by the Commissioner
114 of Public Health for purposes of the Public Health Code, the] The local

115 director of health may authorize the use of an existing private well,
116 [or] consistent with all applicable sections of the regulations of
117 Connecticut state agencies, the installation of a replacement well at a
118 single-family residential premises [that] on property whose boundary
119 is located within two hundred feet of an approved community water
120 supply system, measured along a street, alley or easement, where (1) a
121 premises that is not connected to the public water supply may replace
122 a well used for domestic purposes if water quality testing is performed
123 at the time of the installation, and for at least every ten years thereafter,
124 or for such time as requested by the local director of health, that
125 demonstrates that the replacement well meets the water quality
126 standards for private wells established in the Public Health Code, and
127 provided there is no [connection between the residential water supply
128 well and the] service to the premises by a public water supply, [and all
129 other applicable sections of the regulations of Connecticut state
130 agencies are met,] or (2) a premises served by a public water supply
131 may utilize or replace an existing well or install a new well solely for
132 irrigation purposes or other outdoor water uses provided such well is
133 permanently and physically separated from the internal plumbing
134 system of the premises and a reduced pressure device is installed to
135 protect against a cross connection with the public water supply. Upon
136 a determination by the local director of health that an irrigation well
137 creates an unacceptable risk of injury to the health or safety of persons
138 using the water, to the general public, or to any public water supply,
139 the local director of health may issue an order requiring the immediate
140 implementation of mitigation measures, up to and including
141 permanent abandonment of the well, in accordance with the
142 provisions of the Connecticut Well Drilling Code adopted pursuant to
143 section 25-128. In the event a cross connection with the public water
144 system is found, the owner of the system may terminate service to the
145 premises.

146 Sec. 3. Section 19a-209a of the general statutes is repealed and the
147 following is substituted in lieu thereof (*Effective October 1, 2007*):

148 The director of health of a town, city, or borough or of a district

149 health department may issue a permit for the installation or
150 replacement of a water supply well [on] at residential premises [that
151 are] on property whose boundary is located within two hundred feet
152 of an approved community water supply system, measured along a
153 street, alley or easement, where (1) the water from the water supply
154 well is only used for irrigation or other outside use and is not used for
155 human consumption, [provided] (2) a reduced pressure device is
156 installed to protect against a cross connection with the public water
157 supply, [(2) the well replaces an existing well that was used at the
158 premises for domestic purposes, or (3) the Department of Public Utility
159 Control has ordered the community water supply system to reduce the
160 demand on its system, provided (A)] (3) no connection exists between
161 the water supply well and the community water system, and [(B)] (4)
162 the use of the water supply well will not affect the purity or adequacy
163 of the supply or service to the customers of the community water
164 supply system. Any well installed pursuant to [subdivision (2) of] this
165 subsection, except a well used for irrigation, shall be subject to water
166 quality testing that demonstrates the supply meets the water quality
167 standards established in section 19a-37 at the time of installation and at
168 least every ten years thereafter or as requested by the local director of
169 health. Upon a determination by the local director of health that an
170 irrigation well creates an unacceptable risk of injury to the health or
171 safety of persons using the water, to the general public, or to any
172 public water supply, the local director of health may issue an order
173 requiring the immediate implementation of mitigation measures, up to
174 and including permanent abandonment of the well, in accordance with
175 the provisions of the Connecticut Well Drilling Code adopted pursuant
176 to section 25-128. In the event a cross connection with the public water
177 system is found, the owner of the system may terminate service to the
178 premises.

179 Sec. 4. Subsection (c) of section 19a-37 of the general statutes is
180 repealed and the following is substituted in lieu thereof (*Effective*
181 *October 1, 2007*):

182 (c) The Commissioner of Public Health shall adopt regulations, in

183 accordance with chapter 54, to clarify the criteria under which a well
184 permit exception may be granted and describe the terms and
185 conditions that shall be imposed when a well is allowed at a premise
186 (1) that is connected to a public water supply system, or (2) whose
187 boundary is located within two hundred feet of an approved
188 community water supply system, measured along a street, alley or
189 easement. Such regulations shall [(1)] (A) provide for notification of the
190 permit to the public water supplier, [(2)] (B) address the quality of the
191 water supplied from the well, the means and extent to which the well
192 shall not be interconnected with the public water supply, the need for
193 a physical separation, and the installation of a reduced pressure device
194 for backflow prevention, the inspection and testing requirements of
195 any such reduced pressure device, and [(3)] (C) identify the extent and
196 frequency of water quality testing required for the well supply.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2007	16-262m
Sec. 2	October 1, 2007	19a-36(d)
Sec. 3	October 1, 2007	19a-209a
Sec. 4	October 1, 2007	19a-37(c)

PH *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Public Utility Control, Dept.	CC&PUCF - Cost	121,000	124,000
Public Health, Dept.	GF - None	None	None
Various State Agencies	Various - Cost	Potential Minimal	Potential Minimal

Note: CC&PUCF=Consumer Counsel and Public Utility Control Fund; GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
Local Health Authorities	Cost & Revenue Gain	See Below	See Below

Explanation

Certificate of Public Convenience and Necessity

This bill results in additional water utility regulation for the Department of Public Utility Control (DPUC). To comply with the bill, DPUC would require a Water Utility Engineer since the bill stipulates that investor-owned water utilities are to be transferred to a regulated company when being brought into service. Currently, this provision does not exist and the bill would require additional staff to review the transfer, to ensure that the systems are consistent with the acquiring company's distribution system. Detail on the additional engineer position appears below:

Item	FY 08 (\$)	FY 09 (\$)
Water Engineer	75,345	77,605

Fringes ¹	45,358	46,718
Total	120,703	124,324

The Department of Public Health will be able to comply with the bill's provisions within its normally budgeted resources.

To the extent that the bill expands the definition of water company, for COPCAN purposes, to include state agencies, a minimal cost would be incurred by any affected state agency in the course of paying an application fee of \$100. Few such applications would be anticipated to occur annually.

Well Permits

The bill expands the authority of local health directors to order mitigation measures concerning contaminated irrigation wells. To the extent that various local health authorities exercise this authority, they may experience costs. Any such costs would be offset to the extent that locally established fees and/or fines are collected.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

OLR Bill Analysis**sSB 1341*****AN ACT CONCERNING APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PROTECTING PUBLIC WATER SUPPLIES FROM CONTAMINATION.*****SUMMARY:**

This bill amends the certificate of public convenience and necessity applicable to certain water company construction and expansion by (1) adding “state agency” to the definition of water company; (2) creating two distinct processes for issuing certificates to residential and non-residential water systems; (3) establishing ownership responsibilities for new water supplies, and (4) establishing clearer ties to the water utility coordinating committee (WUCC) drinking water supply planning process.

The bill also makes changes to the permit process for replacement wells and wells on residential properties.

EFFECTIVE DATE: October 1, 2007

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY***Certificate Process***

The law requires water companies to get a certificate of public convenience and necessity from the Department of Public Utility Control (DPUC) and the Department of Public Health (DPH) before they begin the construction or expansion of their systems. Under the law, private companies, municipal water systems, and other entities serving between 15 service connections or 25 persons and 250 connections or 1,000 persons on a regular basis must get a certificate when beginning construction or expanding. The bill applies these provisions to state agencies by amending the definition of water

company to include a state agency. Rather than supplying water to the specified number of connections or persons on a regular basis, the bill applies the certificate requirement to entities that supply water for at least 60 days in any one year.

Conditions for Issuing a Certificate for Residential Systems

Under the law, DPUC and DPH have to issue a certificate if they find that:

1. no feasible interconnection with an existing system is available to the applicant;
2. the applicant planned to build or expand according to DPUC-established engineering standards;
3. the applicant has the financial, technical, and managerial resources to operate the proposed water supply system reliably and efficiently enough to provide continuous service;
4. the proposed construction or expansion would not result in a duplication of service in the applicable service area; and
5. the system meets all federal and state standards for water supply systems.

The bill makes these conditions applicable specifically to systems serving 25 or more residents (“residential systems”) and changes conditions 1 and 3 above as follows:

1. no interconnection is feasible with a water system owned by, or made available through an arrangement with, the provider of the exclusive service area (ESA) or with another existing water system where no ESA has been assigned; and
2. eliminates the requirement that the applicant have the financial, managerial and technical resources to reliably operate the system and instead assigns ownership of the system to the ESA provider;

The other conditions remain the same.

An ESA, under the law, is an area where public water is supplied by one system. ESAs are determined by a process involving WUCCs, which DPH convenes for public water supply management areas. Such areas are regions determined by DPH to have similar water supply problems (CGS § 25-33d to 25-33j).

Exemption for Municipal Systems

Current law exempts certain municipal water systems from the interconnection feasibility and the non-duplication requirements described above. This applies to any water system (1) owned and operated or proposed to be owned and operated by a municipality, municipal district, or regional water authority; (2) owned by a municipality, municipal district, or regional authority and operated, or proposed to be so, on its behalf by an operator that has obtained all required DPH certifications; or (3) owned or operated by a nonprofit corporation on behalf of one or more municipalities for providing water service to an elderly housing project with all required DPH certifications. Current law also does not prevent a municipality, municipal district, or regional water authority from voluntarily transferring ownership of a water supply system to another water company, municipal public service company, or regional water authority.

The bill eliminates these exemptions for municipal water systems, thus subjecting them to all of the conditions for certificate issuance described above.

Regulations

The bill requires DPUC and DPH to each adopt regulations on the certificate process for residential systems. Current law only requires DPUC, in consultation with DPH, to adopt such regulations.

Certificate Process for Non-Residential Systems

The bill establishes a distinct and separate certificate process that DPH administers for water systems serving 25 or more persons, but

not 25 or more residents, for at least 60 days in any one year (a “non-residential system”) that parallels the system for residential systems described above. These systems basically serve entities such as certain schools, offices, restaurants, convenience stores, and similar entities. The conditions for obtaining the certificate are basically the same as for residential systems except that ownership of the system will be assigned to the ESA provider if agreeable to it and DPH, or may remain with the certificate applicant if agreeable to DPH. The applicant must have the financial, managerial, and technical resources to (1) operate the proposed system in a reliable and efficient manner and (2) provide continuous and adequate service to consumers until such time as the water system for the ESA has made an extension of the water main. At that time, the applicant must get service from the ESA provider.

The bill specifies that any construction or expansion requiring a certificate must be built, maintained, and operated according to the certificate and any of its terms, limits, or conditions.

The bill exempts properties held by the Department of Environmental Protection (DEP) and used for or in support of fish culture, natural resources conservation, or outdoor recreation from the certificate requirements concerning interconnection feasibility, ownership assignment to the ESA provider, and the duplication of service.

The bill requires DPH to adopt regulations implementing this process for non-residential systems. The regulations may include measures to encourage water conservation and proper maintenance.

WELL PERMITS

Replacement Wells

Current law allows a local health director, regardless of DPH regulations, to authorize under certain conditions an existing well’s use or its replacement at a single-family residence located within 200 feet of a community water supply system measured along a street,

alley or easement. This can occur:

1. for a replacement well used for domestic purposes if (a) the premises are not connected to the public water supply, (b) the water quality is tested at installation and at least every 10 years afterward or as requested by the health director, (c) the testing shows the well meets the Public Health Code's water quality standards for wells, and (d) all other regulatory requirements are met; and
2. for a new or replacement well on a premises served by a public water supply if (a) it is used solely for irrigation or some other outdoor purpose, (b) it is permanently and physically separated from the home's internal plumbing, and (c) a reduced pressure device is installed to protect against a cross-connection with the public water supply.

The bill changes the 200 feet standard by specifying that this distance is measured from the property's boundary.

This bill authorizes a local health director to issue an order requiring the immediate implementation of mitigation measures, up to and including permanent abandonment of the well, according to the Connecticut Well Drilling Code, if he determines that an irrigation well creates an unacceptable risk of injury to the health or safety of those using the water, the general public, or to any public water supply. The bill allows the owner of the system to terminate service to the premises if a cross connection with the public water system is found.

Permits for Wells on Residential Property

DPH regulations generally prohibit private wells on residential property within 200 feet of a public water supply. Current law allows local health directors to issue a permit for a new or replacement well only if:

1. the well water is used only for irrigation or other outdoor purpose, is not used for human consumption, and a reduced

pressure device is installed to protect against a cross-connection with the public water supply;

2. the well replaces one that was used at the premises for domestic purposes and is subject to water quality testing when it is installed and at least every 10 years afterward or as requested by the health director; or
3. DPUC has ordered the public water system to reduce the demand on it, the well is not connected to the public water supply, and use of the well does not impair the purity or adequacy of the supply or service to the system's customers.

The bill gives the local health director the same authority to issue an order requiring immediate mitigation measures concerning an irrigation well as described above in the previous section. It exempts irrigation wells from the water quality testing standards and uses the same 200 foot boundary standard described earlier.

Regulations

By law, the DPH commissioner must adopt regulations clarifying criteria under which a well permit exception may be granted and describing conditions that must be imposed when a well is permitted at premises that are connected to the public water supply. The bill specifies that these regulations also address the situation when a well is permitted when the premises' boundary is within 200 feet of an approved community water system.

BACKGROUND

Public Water Supply Coordination

PA 85-535 required DPH to administer a procedure to coordinate the planning of public water supply systems. The law provides for a coordinated approach to long-range water supply planning by addressing water quality and quantity issues from an area-wide perspective. The process is designed to bring together public water system representatives and regional planning organizations to discuss long-range water supply issues and develop a plan for dealing with

them.

The state is divided into seven management areas based on factors such as similarity of supply problems, such as proliferation of small water systems, groundwater contamination, and over-allocated water resources. DPH convenes a WUCC for a particular management area to address these issues. A WUCC consists of one representative from each public water system with a source of supply or service area within the public water supply management area and one representative from each regional planning agency within the management area (CGS §§ 25-33d to 25-33j; DPH Regs. § 25-33h-1 et seq.).

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 28 Nay 0 (03/19/2007)